**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.8600 OF 2005**

Jagdish R. Shah ...Petitioner.

Versus

Smt.Vatsala B. Gaikwad & Ors. ...Respondents.

Smt.Anita Agarwal for the Petitioner.
Ms. Sangeeta Choudhari i/b Revati Mohite-Dere for Respondent Nos.1 to 3..

**CORAM : S.C.DHARMADHIKARI,J.**

**DATE : 2nd FEBRUARY, 2006.**

**P.C. :**

. Rule. Returnable forthwith by consent of parties. Ms.Choudhari waives service for respondent Nos.1 to 3. Service on respondent Nos.4 to 12 dispensed with.

2. This Petition under Article 227 of the Constitution of India is directed against the orders dated 4th August, 2005 and 10th November, 2005 passed on applications (Exhs.94 & 104 respectively) in Special Civil Suit No.1980 of 1998.

3. The petitioner who is a party-defendant to the Suit, more particularly defendant No.9, has filed Written Statement after he was so added and that

Written Statement is taken on record of the trial Court. The Written Statement is affirmed on 24th September, 2002.

4. An application for amendment was necessitated, according to the petitioner, because after the Written Statement was filed, there were certain proceedings inasmuch as Regular Civil Suit No.1332 of 2003 was filed for eviction and possession. There are certain proceedings and certain orders passed therein. These developments were sought to be placed on record.

5. The application (Exh.94) specifically records the above developments and in Paras-2 to 4, the orders referred to in these proceedings, are relied upon and ultimately the proposed amendment is set-out.

6. This application was heard by the trial Court in the absence of the petitioner’s Advocate and rejected as being devoid of any substance.

7. Application (Exh.104) was preferred by the petitioner for reviewing this order; and the review is also rejected by the learned Judge by further order dated 10th November, 2005.

8. With the assistance of Mrs. Agarwal and also the learned Advocate appearing for the respondents, I

have perused the applications, the reply thereto and the orders passed thereon.

9. The learned Judge has gone into the merits of the amended pleas and has held that amendment is not necessary. Secondly, the learned Judge has faulted the petitioner for not applying for the amendment in time and has termed the filing of an application as a delaying tactic.

10. In my view, the merits of the amended pleas are not at all to be gone into at this stage. As to whether the subsequent developments would have a bearing on the subject matter of the present Suit is also not something which the trial Court is required to decide at this stage. If the application is belated then it is well settled that the orig.plaintiff has to be compensated for such delay, by imposing costs. Ultimately, it is not as if the learned Judge is of the opinion that the amendment to the Written Statement is either taking away any accrued right of the plaintiffs by some admission or that it materially alters the nature of the defence. Hence, the following order. :

11. ORDER :

1. Rule is made absolute in terms of Prayer Clauses ‘(a)’ & ‘(b)’.

2. The order dated 4th August, 2005 is set-aside. Application (Exh.94) is granted.

3. Amendment to be carried out within a period of one week from today.

4. The petitioner to pay costs quantified at Rs.1500/- (Rs.Fifteen Hundred Only) to the orig.plaintiffs within a period of one week from today.

5. Parties to act upon an authenticated copy of this order.

**( S.C.DHARMADHIKARI,J.)**